

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
HILD FLOOR MACHINE COMPANY, INC. }

For Appellant: Joseph Roti, President

For Respondent: Burl D. Lack, Chief Counsel;
 Crawford H. Thomas, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Hild Floor Machine Company, Inc., for refund of franchise tax in the amount of \$240.76 for the taxable year ended May 31, 1957.

Appellant is an Illinois corporation engaged in the manufacture of floor cleaning machines. It was incorporated on October 2, 1954, and adopted a fiscal year ending May 31. It commenced doing business in California on November 19, 1954, without qualifying to do business as required by Sections 6400, et seq., of the Corporations Code. Appellant ceased business in California on December 1, 1956.

For the short taxable year ended May 31, 1955, Appellant paid a tax of \$73.29. It paid a tax of \$255.66 for its second taxable year, and the same amount for its third taxable year, ended May 31, 1957. In August, 1957, Appellant asked for an extension of time to file a return and at the same time made a payment of \$75.00. In November, 1957, Appellant filed a return reporting a tax of \$89.90 based on its income for the year ended May 31, 1957.

As a basis for its appeal, Appellant submitted the following computation:

Prepayment of tax for year ended May 31, 1957, made on February 1, 1957	\$255.66
Payment with August 15, 1957, tentative return	<u>75.00</u>
Total May 31, 1957, tax	\$330.66
Tax on May 31, 1957, return for 4% on \$2,247.55 net income	<u>89.90</u> \$240.76

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Since the filing of this appeal, the Franchise Tax Board has conceded that Appellant is entitled to a refund of the \$75.00 paid in August, 1957, and has refunded that amount.

The written information submitted by Appellant is meager and unclear and no appearance was made on its behalf at the time this matter was scheduled for hearing. Appellant's position seems to be, however, that its tax for its third taxable year, ended May 31, 1957, should be measured by its income for that year rather than by the income of the preceding year.

The tax paid for the third taxable year, ended May 31, 1957, was properly measured by the income of the second taxable year. There is no support for any other contention. Section 2322 of the Revenue and Taxation Code specifically provides that the tax for the third taxable year shall be measured by the income of the preceding year if such year constitutes a period of twelve months. Here Appellant's second year (June 1, 1955, to May 31, 1956) was a full year. In the case of a foreign corporation that withdraws from the State, Section 23332 provides for a proration of the tax for the corporation's last taxable year according to the number of months of that year which pass before the withdrawal. Section 23331 states that the effective date of withdrawal of a foreign corporation is the date on which the certificate of withdrawal is filed in the office of the Secretary of State. Appellant did not comply with the latter section and thus there is no authority to allow a refund based upon prorating the tax. We can conceive of no other ground for allowing a refund in excess of the amount which the Franchise Tax Board has already refunded.

O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Hild Floor

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Machine Company, Inc., for refund of franchise tax in the amount of \$240.76 for the taxable year ended May 31, 1957, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of March, 1961, by the State Board of Equalization.

John W. Lynch, Chairman

Richard Nevins, Member

Paul R. Leake, Member

Geo. R. Reilly, Member

 , Member

ATTEST: Dixwell L. Pierce Secretary